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Filing date: **08/20/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91177540
Party	Defendant OnPoint Community Credit Union
Correspondence Address	STEPHEN F. COOK BULLIVANT HOUSER BAILEY PC 888 SW 5TH AVE STE 300 PORTLAND, OR 97204-2089 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Stephen F. Cook
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Signature	/Stephen F. Cook/
Date	08/20/2008
Attachments	Filed Request to Treat Motion as Conceded.pdf (3 pages)(89462 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Point Mortgage,)	Opposition No.: 91177540
)	
Opposer,)	
)	
v.)	<u>APPLICANT'S REQUEST THAT ITS</u>
)	<u>MOTION TO DISMISS BE TREATED</u>
OnPoint Community Credit Union,)	<u>AS CONCEDED</u>
)	
Applicant.)	

INTRODUCTION

Applicant filed a Motion To Dismiss this opposition proceeding under 37 CFR §2.132(a) due to Opposer's failure to submit any evidence during its testimonial period. The dual purpose of this Request is to ask that the Board treat Applicant's motion as conceded and to object to any late-filed opposition to the motion.¹

ARGUMENT

I. Service

Applicant's Motion to Dismiss was served by first class mail on July 14, 2008. Service was mailed to Opposer at the Florida address it has on file with the Board and used when it filed its Notice of Opposition.² See, Applicant's Motion To Dismiss filed on July 14, 2008.

Other mail that Applicant sent to Opposer at its Florida address has been subsequently returned as undeliverable. See, Applicant's Notice of Undeliverable Mail filed on July 31, 2008. So there would be no question regarding service of the Motion to Dismiss, Applicant served it a second time on Opposer at a California address also known to be maintained by Opposer. *Id.*³

¹ See, *Western Worldwide Enterprises Group Inc. v. Qinqdao Brewery*, 17 USPQ2d 1137, 1139 n.6 (TTAB 1990) (failure to object to a late-filed opposition to a motion constitutes a waiver).

² That address is: 9999 Sunset Dr., Suite 208 in Miami, Florida 33173

³ The originally served Motion To Dismiss has not been returned undeliverable nor has the copy that was served on Opposer at its California address.

Opposer was obligated, therefore, to respond to the motion by August 4, 2008 (if based on the first service) or by August 20, 2008 (if based on the second service).⁴ To date, Opposer has not responded.

II. The Motion Should Be Treated As Conceded

When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded. 37 C.F.R. §2.127(a); TBMP §502.04; *Central Manufacturing Inc. v. Third Millennium Technology, Inc.*, 61 USPQ2d 1210, 1211 (TTAB 2001) (motion to dismiss treated as conceded). Opposer has chosen not to file a brief in response to the pending motion within the time prescribed by the rules.

Opposer's failure to respond is consistent with its nearly complete abandonment of this proceeding beginning with its (1) non-conforming Notice of Opposition, and then continuing via its (2) failure to timely respond to Applicant's first Motion To Dismiss, (3) failure to engage in any substantive discovery or to cooperate during discovery, and (4) failure to take or submit any evidence during its testimonial period. See, Applicant's Motion To Dismiss filed on July 14, 2008.

CONCLUSION

Applicant respectfully requests that its Motion To Dismiss be treated as conceded, that this proceeding be dismissed with prejudice, and that Applicant's registration application Serial No. 78/973431 be issued a Notice of Allowance.

Date: August 20, 2008

Respectfully Submitted,

By: /s/ Stephen F. Cook

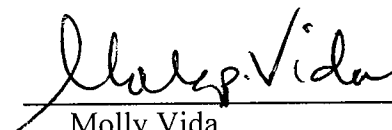
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Attorneys for Applicant

⁴ TBMP §502.02(b) (twenty days to respond if served by mail).

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S REQUEST THAT ITS MOTION TO DISMISS BE TREATED AS CONCEDED has been served on Point Mortgage c/o Johnny Margarini by mailing said copy on August 20, 2008 via First Class Mail, postage prepaid to:

Johnny Margarini
4538 Bonita Rd.
Bonita, CA 91902



Molly Vida